

37 Am. Jur. 2d Fraud and Deceit § 106

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Fraud and Deceit

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IV. False Representations

E. Falsity

§ 106. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  13(.5), 13(1)

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 69](#) (Answer—Defense—Denial of falsity of representations)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 207](#) (Instructions to jury—Elements of fraud—General form)

It is fundamental in the law of fraud that a representation must be false to warrant a basis for relief.¹ It follows that unless a false impression is deliberately created by its use,² a representation that was true cannot serve as a basis for a claim of fraud.³ However, a representation can be technically accurate, yet still misleading, for purposes of negligent and intentional misrepresentation claims.⁴

In order to establish a case of false representation it is not necessary that something that is false have been stated as if it were true, it being sufficient that a false impression have been produced in the mind of the other party.⁵ It is immaterial that no specific statement in a prospectus is false if the general impression conveyed by it is false.⁶ Moreover, if by a number of statements one intentionally gives a false impression and induces another to act upon it, it is not the less false, even though, if each statement is taken by itself, there may be difficulty in showing that any specific statement is untrue.⁷

Caution:

The fact that false representations were made in good faith will not exonerate the party making the representations.⁸

The determination in a fraud action of the meaning of representations and their truth or falsity is to be made in light of the meaning that the plaintiffs would reasonably attach to the statements in the existing circumstances, and the words employed must be considered against the background and in the context in which they were used.⁹ The falsity of statements made in the course of negotiations for a final settlement of the rights of parties to a contract, relative to what obligations are imposed by the contract and to the effect of the failure to make a settlement, is a question of law and not of fact.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Term "fraud," as commonly used, typically requires a false statement or omission. [Bullock v. BankChampaign, N.A., 133 S. Ct. 1754 \(2013\).](#)

An essential element of fraud is that there be a false representation of a material fact which either exists in the present or has existed in the past. [NDCC 9–03–08. Ward Farms Partnership v. Enerbase Co-op. Resources, 2015 ND 136, 863 N.W.2d 868 \(N.D. 2015\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S. v. Beebe, 180 U.S. 343, 21 S. Ct. 371, 45 L. Ed. 563 \(1901\); Prestwood v. City of Andalusia, 709 So. 2d 1173 \(Ala. 1997\); Turner v. Milliman, 392 S.C. 116, 708 S.E.2d 766 \(2011\); Hennig v. Ahearn, 230 Wis. 2d 149, 601 N.W.2d 14 \(Ct. App. 1999\).](#)
- 2 [Sawyer v. Prickett, 86 U.S. 146, 22 L. Ed. 105, 1873 WL 15933 \(1873\).](#)
- 3 [Sawyer v. Prickett, 86 U.S. 146, 22 L. Ed. 105, 1873 WL 15933 \(1873\); Spreitzer v. Hawkeye State Bank, 779 N.W.2d 726 \(Iowa 2009\); Sonterra Capital Partners, Ltd. v. Sonterra Property Owners Ass'n, Inc., 216 S.W.3d 417 \(Tex. App. San Antonio 2006\).](#)
- 4 [Grove Holding Corp. v. First Wisconsin Nat. Bank of Sheboygan, 12 F. Supp. 2d 885, 41 Fed. R. Serv. 3d 1595 \(E.D. Wis. 1998\).](#)
- 5 [McClellan v. Tobin, 219 Ind. 563, 39 N.E.2d 772 \(1942\).](#)
- 6 [McClellan v. Tobin, 219 Ind. 563, 39 N.E.2d 772 \(1942\); Downey v. Finucane, 205 N.Y. 251, 98 N.E. 391 \(1912\).](#)
- 7 [Downey v. Finucane, 205 N.Y. 251, 98 N.E. 391 \(1912\).](#)

- 8 [Monroe v. Mercer](#), 414 S.W.2d 756 (Tex. Civ. App. Houston 1967), writ dismissed, (Oct. 4, 1967).
9 [Haberstick v. Gordon A. Gundaker Real Estate Co., Inc.](#), 921 S.W.2d 104 (Mo. Ct. App. E.D. 1996).
10 [Benz v. Zobel](#), 255 Wis. 542, 39 N.W.2d 713, 13 A.L.R.2d 795 (1949).

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